IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1828 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

AJMAL GANESHBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1828 of 2001

MR JITENDRA MALKAN for Petitioner No. 1
MR RC KODEKAR AGP for Respondent No. 1
MR JB PARDIWALA for Respondent No. 2
LAW OFFICER BRANCH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 26/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA for the Court)

1. By this petition under Article 226 of the Constitution, the petitioner has prayed quashing of the order dated 19.1.2001, whereby the High Court communicated the decision to delete name of the petitioner from the merit list made for appointment to the post of Civil Judge (Junior Division). That decision is challenged mainly on the ground of violation of the principles of natural justice.

2. It appears from the record and there is no dispute about the fact that the petitioner was selected by the Gujarat High Court for appointment to the post of Civil Judge (Junior Division) & Judicial Magistrate, First Class and his name was included in the merit list dated 21.1.1998. The name of the petitioner appeared at serial No.22 and, out of 110 selected candidates, 75 were given appointments by the State. However, the name of the petitioner was referred to the High Court for examination in view of several police complaints registered against the petitioner. In view of pendency of such criminal cases and compromises recorded therein or the acquittals obtained thereon and on such facts having not been disclosed during the process of selection, the High Court formed a tentative opinion that it was not desirable to give appointment to the petitioner and proposed to delete from the merit list of selectees the name of the petitioner. Therefore, before taking any final decision, a notice dated 5.10.2000 was served upon the petitioner to give him an opportunity to put forward his say in relation to the facts. The petitioner appears to have filed written submissions and an opportunity of being personally heard was also afforded to and availed by the petitioner.

3. The Committee of two Honourable Judges of the High Court constituted by the Standing Committee of the High Court to consider the matter, to give hearing and to give recommendations as regards giving appointment or otherwise to the petitioner, heard the petitioner and, after considering the relevant material, including the say of the petitioner on all aspects, expressed the opinion that the petitioner should not be appointed as Civil Judge (Junior Division) & Judicial Magistrate, First Class. The impugned order dated 19.1.2001 is clearly based on the aforesaid opinion dated 22.11.2000 of the Committee. By the impugned order, it was conveyed to the petitioner that the High Court had given

thoughtful consideration to the facts and circumstances after the report submitted by the Committee and it had come to the conclusion that the petitioner had no occasion to disclose pendency of the criminal proceedings at the time of oral interview. However, as stated in the impugned order, even though the petitioner was acquitted in the criminal cases, in the facts and circumstances emerging from the record, it was clear that serious allegations were made in the complaint lodged against him and, during the pendency of the cases, pressure was brought on the complainant to arrive at a compromise so as to get the criminal cases wound up. The compromise pursis was found to have been filed after the petitioner had come to know that his name had appeared in the select list. It was also noticed that the petitioner had participated in staging of demonstration against Shri K.G.Balakrishnan, the then Honourable Chief Justice of Gujarat High Court and the then Honourable Law Minister which reflected on his character. That, in view of that background, it would not be in the interest of judiciary to give appointment to the petitioner, according to the impugned order.

4. We had called for the original record and proceedings of the Committee and perused the report by which the opinion against appointment of the petitioner was placed before the High Court. It was also made available for perusal to the learned counsel for the petitioner. Referring to paragraphs 8, 9 and 10 of the said report, the learned counsel for the petitioner submitted that the facts and material held against the petitioner were not mentioned in the show cause notice by which his explanation was invited. He submitted that, although the fact of the pending criminal cases and participation in the demonstration was not disputed, the petitioner had fully and satisfactorily explained the circumstances appearing against him and that there was no material in support of the inference that the criminal cases were wound up by bringing pressure on the complainant.

5. We ascertained from the report of the Committee that, after perusing the record and proceedings of the Criminal Cases Nos.1784 and 1791 of 1998, it became clear to the Committee that during the pendency of the said cases, pressure was brought on the complainant to arrive at a compromise and to get the criminal cases wound up. Thus, in short, it was found to be unreasonable by a Committee of the High Court which had considered all the relevant material and heard the petitioner that the petitioner should be appointed on the post of a Judge.

It was not disputed before us also that the petitioner was at one stage involved in five criminal cases, out of which four cases were disposed otherwise than on merits in which chargesheets were filed and they were concluded around the period the petitioner's name appeared in the merit list. Therefore, it was not unreasonable to infer that several criminal cases were wound up at the instance of the petitioner after he came to know that his name has appeared in the select list. It is also an admitted position that he was detained by police under Section 68 of the Bombay Police Act and was released under Section 69 at the time demonstrations were staged in Gandhidham against the then Honourable Chief Justice and the Honourable Law Minister.

6. It was submitted by the learned counsel Mr.Pardiwala, appearing for the respondent, that, as held by the Supreme Court in a long line of judgments in VINODAN T. v. UNIVERSITY OF CALICUT [(2002) 4 SCC 726], S.RENUKA AND OTHERS v. STATE OF A.P. [(2002) 5 SCC 195] and ALL INDIA SC & ST EMPLOYEES' ASSOCIATION v. A.ARTHUR JEEN [(2001) 6 SCC 380], merely because name of the candidate was included in the panel, he does not have any indefeasible right for appointment even against an existing vacancy and the State was under no legal obligation to fill up the vacancy. It was pointed out from the judgment of the Supreme Court in S. GOVINDARAJU v. K.S.R.T.C. [1986 (2) SLR 326] that, once a candidate is selected, he gets a right to be considered for appointment and, on the removal of his name from the select list, the principles of natural justice required that an opportunity of explanation should be given though no elaborate enquiry would be necessary. It is held that giving an opportunity of explanation would meet the bare minimal requirement of natural justice. And, in the facts of the present case, that requirement was sufficiently satisfied insofar as a Committee was constituted and an elaborate written opinion was submitted for decision by the High Court. In these circumstances, we are satisfied that the requirement of observation of the principles of natural justice was fully complied and no ground is made out to interfere, in exercise of the extraordinary writ jurisdiction of this Court, with the impugned order. The petition is, therefore, rejected and Rule is discharged with no order as to costs.

Sd/-

(R.K.Abichandani, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)